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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/798,120	03/11/2004	Lawrence M. Janesky	257-011631-US(PAR)	8802
2512	7590	02/05/2007	EXAMINER	
PERMAN & GREEN 425 POST ROAD FAIRFIELD, CT 06824			GILBERT, WILLIAM V	
			ART UNIT	PAPER NUMBER
			3635	
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		02/05/2007	PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

## Office Action Summary

Application No.

10/798,120

Applicant(s)

JANESKY, LAWRENCE M.

Examiner

William V. Gilbert

Art Unit

3635

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 11 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

This is a First Action on the Merits. Claims 1-5 are pending and examined as set forth below.

#### ***Information Disclosure Statement***

1. The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609.04(a) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

#### ***Claim Objections***

2. **Claims 2-5** are objected to because of the following informalities: Applicant makes reference to a combination of "the footing" with the drain panel assembly, but does not earlier claim the footing. The phrase of claim 1, "for the control of water...footing", lines 1-4 is a statement of intended use of the invention, but does not provide any further structural limitation of the apparatus. Appropriate correction is required.

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Claim 1 is objected to because of the following informalities: lack of antecedent bases "the rear surface" line

7. Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**Claims 1-5** are rejected under 35 U.S.C. 102(b) as being anticipated by Kuypers (U.S. Patent No. 4,745,716).

Claim 1: Kuypers discloses a drain panel assembly (Figure 9, element 100), having a plastic drain panel (100, Column 5, lines 24, 25) an upper panel section (152) that extends vertically from a lower skirt section (144), the lower skirt is spaced from the basement wall (by elements 142) by sections extending outwardly and forming a longitudinal water conduit (142, 143) with a plurality of spaced drain openings (143).

Claim 2: the lower skirt (142) has a cover means (141) for shielding the drain openings (where cover and lower skirt meet).

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Claim 3: the cover means comprises a plurality of spaced narrow shield strips (145) of plastic (Column 5, lines 24, 25), contoured to provide a water flow passage between the underside and surface of the footing (Figure 1, element 36), and the passage (142) communicates between the drain opening (Figure 1, element "A") and edge of the footing.

Claim 4: the drain panel has a plurality of spaced depressions (143) forming concrete receiving wells, which support a basement floor (Figure 1, element 33).

Claim 5: the cover means (141) comprises a shield strip (141) of plastic (Column 5, lines 24, 25) having ribs (145) to support the strip on a footing surface (36) and the underside of the strip spaced therefrom to provide a flow space between a drain opening (Figure 1, element "A") and the edge of the footing (36).

#### **Conclusion**

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Johnson (U.S. Patent No. 5,044,821), Jackman (U.S. Patent No. 5,794,388), Brunson et al. (U.S. Patent No. 6,684,579) and Parker (U.S. Patent No. 5,694,723).

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to William V. Gilbert whose telephone number is 571.272.9055. The examiner can normally be reached on Monday - Friday, 08:00 to 17:00 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl Friedman can be reached on 571.272.6842. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

WVG  
21 Feb 2007

Paul K. Kish  
EBC  
NO 3635 2/1/07